IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

FAO.No. 80 of 2007()

AGAINST THE ORDER DATED 23/02/2007 IN EA.267/06,EP.2/03 IN OS.40/1999 of SUB COURT,KOTTARAKKARA

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: APPELLANT:

FAZEELABEEGAM, PUTHEN BUNGLOW,
PADINJATTINKARA MURI, KOTTARAKKARA VILLAGE,
NOW RESIDING AT FLAT NO.115,
PANDITS COLONY, KOWDIAR,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.SANIL KUMAR

RESPONDENTS:
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1. BHARGAVARAMAN PILLAI,
S/O.NEELAKANTA PILLAI, GOKULAM VEEDU,
AVANOOR MURI, NEDUVATHOOR, KOTTARAKARA.

2. V. RADHAKRISHNAN, AGED 50 YEARS,
AMBIKASADANAM, MARANADU MURI,
PAVITHRESWARAM, KOTTARAKARA.

R2 BY ADV. SRI.R.ARUN RAJ
R1 SRI.VINOY VARGHESE KALLUMOOTTILL
SRI.E.N.VISHNU NAMBOODIRI

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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F.A.O.NO.80 of 2007

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Dated this the 19th day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

This appeal is filed by the judgment debtor in O.S. No.40/1999 on the file of the Sub Court, Kottarakkara. The matter arises in execution. Pursuant to the decree in E.P.No.2/2003, an extent of 1.90 ares of land was originally brought to sale as per the proclamation schedule filed by the decree holder. In the said area a two storied building is existing and a stranger filed a claim petition for excluding one half portion of the ground floor of the building claiming right over it. The execution court after accepting the claim, excluded that portion from sale proclamation. There was yet another claim petition filed by one Sainudeen and one Nazeer claiming right over 40 sq. meters of property on the ground floor of the building. On the basis of their claim petition, the other half of the ground floor of the building in the proclamation scheduled property was excluded from sale. Ultimately, the remaining portion of the property which lies on the back side of the ground floor and the first floor building alone were

brought to sale. Even though Rs.6 lakhs was shown as market value by the decree holder, the execution court fixed the upset price at Rs.8 lakhs and the property was sold for a total consideration of Rs.15,36,000/-. The auction purchaser is the second respondent herein.

2. It is at that stage the judgment debtor who is the appellant herein filed E.A.No.267/2006 under Order XXI Rule 90 C.P.C. for setting aside the sale. The court below dismissed the said execution application after finding that no valid grounds have been established to set aside the sale.

3. The matter was heard on 21.6.2007. It was contended at that time by the learned counsel for the appellant that the decree has been passed ex-parte and applications have been filed to set aside the ex-parte decree and a direction may be issued to pass orders on the said applications. The counsel for the decree holder submitted that in case the appellant deposits the decree amount for showing her bonafides, he has no objection in the prayer being allowed. The matter was adjourned to 26.6.2007 at the instance of the counsel for the appellant to get instructions on that.

4. When the matter again came up for hearing, learned counsel for the appellant submitted that the suggestion made by the decree holder was not acceptable and the appeal may be heard on merits.

5. It was argued by the learned counsel for the appellant that the proclamation was not settled properly and only a small portion of the property had to be sold for satisfying the decree. It was also submitted that on a proper valuation of the property sold, it would be evident that it will fetch at least Rs.60 lakhs.

6. Admittedly the judgment debtor did not file objections to the execution application. The appellant did not appear before the execution court also in spite of receipt of various notices and in spite of the publication of various notices in the newspapers. It was submitted that proclamation for sale was published properly and a copy of the same was duly affixed in the front door of the building sought to be sold.

7. The following facts emerge from the pleadings of the parties. The appellant did not participate in the execution proceedings at any time. In fact, even in support of the application to set aside the sale, no affidavit has been filed. No evidence has been adduced as regards the alleged irregularity in publishing the proclamation of the sale of the property. Notice on the execution proceedings had also been published in daily newspapers. She had also no contention that she was not aware of the passing of the ex-parte decree and she appeared before the execution court

only after the sale of the property. Apart from that, it is evident that only a portion of the building has been sold and therefore the contention that only a portion ought to have been sold, is without any substance. Even though initially 1.90 ares with building was proclaimed for sale, it was modified after two claim petitions were allowed. Now what is sold is the remaining portion of the property which lies on the back side of the ground floor and first floor building. Even though learned counsel for the appellant submitted that if a small portion is sold, that alone will fetch the decree amount, no materials have been placed either before the execution court or before this court in support of the above contention. No evidence was adduced also in support of the contention that the property sold will fetch Rs.60 lakhs as per the market value. The court below had also found that apportionment of the remaining property was not practical.

8. We find that the contentions of the appellant have to fail. No evidence was adduced before the court below either in regard to the irregularity in the conduct of the sale or about the settling of the proclamation of the sale. Regarding market value of the property also, apart from the assertion by the appellant that it will fetch Rs.60 lakhs, no tangible evidence have been produced in support of the said assertion. The court

below has considered the entire matter in detail.

We agree with the reasoning and finding of the execution court. There is no merit in the appeal and hence the same is dismissed without any order as to costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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